

Michael P. Thorman, State Bar No. 63008  
BONJOUR, THORMAN, BARAY & BILLINGSLEY  
24301 Southland Drive, Suite 312  
Hayward, CA 94544  
(510) 785-8400  
[michael@btbandb.com](mailto:michael@btbandb.com)

Attorneys for Defendant  
Lindsey Bertelson

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

No. CR-07-00780-1 SBA

Plaintiff,

vs.

MOTION TO CORRECT  
SENTENCE [F.R.Cr. P. 35(a)]

LINDSEY BERTELSON

Defendant.

COMES NOW defendant LINDSEY BERTELSON, by and through her counsel Michael P. Thorman, who hereby moves pursuant to Federal Rule of Criminal Procedure 35 (a) to correct the Court's Judgment of Imprisonment, entered April 29, 2008, to state the defendant's term of imprisonment is twelve months and one day rather than twelve months. The United States does not oppose this motion.

The ground for this motion is that defendant is not entitled to any good time credit on a sentence of twelve months whereas she is entitled to earn good time credit on a sentence of twelve months and a day, and the Court, in imposing the bottom of the guideline range, could not have intended to impose a sentence having such an effect.

This motion is based on all documents on file in this action, the attached memorandum of points and authorities, and the attached declaration of counsel. No hearing date is requested inasmuch as this correction is a ministerial act which must be performed within 7 days

1 of April 29, 2008.

2  
3 DATED: May 2, 2008

4  
5 Respectfully Submitted

6  
7 /s/  
8 MICHAEL P. THORMAN  
9 Attorney for Lindsey Bertelsen  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Michael P. Thorman, State Bar No. 63008  
BONJOUR, THORMAN, BARAY & BILLINGSLEY  
24301 Southland Drive, Suite 312  
Hayward, CA 94544  
(510) 785-8400  
[michael@btbandb.com](mailto:michael@btbandb.com)

Attorneys for Defendant  
Lindsey Bertelson

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

No. CR-07-00780-1 SBA

MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF MOTION TO CORRECT  
SENTENCE

vs.

LINDSEY BERTELSON

Defendant.

As a general rule, a Court lacks jurisdiction to change or modify a prison sentence once imposed. 18 U.S.C. 3582(c). Nevertheless, subpart (1)(B) allows modification “to the extent otherwise permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.”

F.R.Cr.P. 35 (a) allows the District Court “within 7 days after sentencing” to “correct a sentence that resulted from arithmetical, technical, or other clear error.” The correction must be made within 7 days of sentencing; thereafter, the Court loses jurisdiction to change the sentence. *United States v. Penna*, 319 F.3d 509 (9<sup>th</sup> Cir. 2003).

In the present case, the defendant’s guideline range was 12-18 months based on an offense level of 12 and a criminal history category of 2. In imposing a sentence at the very bottom of the guideline range, the Court clearly intended to impose the least amount of imprisonment permitted by the guidelines. Had counsel advised the Court that defendant would

1 serve all twelve months of a twelve month sentence, but would only serve 80% of a sentence of  
2 twelve months and one day, the Court undoubtedly would have increased the sentence by one day  
3 to confer this benefit on the defendant.

4 The sentence therefore appears to have resulted from a technical or arithmetical error  
5 which can be corrected pursuant to Rule 35(a).

6  
7 DATED: May 2, 2008

8  
9 Respectfully Submitted,

10  
11 /s/  
12 MICHAEL P. THORMAN

Michael P. Thorman, State Bar No. 63008  
BONJOUR, THORMAN, BARAY & BILLINGSLEY  
24301 Southland Drive, Suite 312  
Hayward, CA 94544  
(510) 785-8400  
[michael@btbandb.com](mailto:michael@btbandb.com)

Attorneys for Defendant  
Lindsey Bertelson

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

No. CR-07-00780-1 SBA

DECLARATION IN SUPPORT OF  
MOTION TO CORRECT  
SENTENCE

vs.

LINDSEY BERTELSON

Defendant.

I, Michael P. Thorman, declare:

1. I am an attorney at law, licensed to practice in this Court. I am the attorney of record for defendant Lindsey Bertelson.

2. On April 29, 2008, this Court imposed a sentence of 12 months imprisonment, the very bottom of the guideline range. Defendant is not allowed to earn any good time credit against that sentence and will thus have to serve a full twelve months of imprisonment. However, if defendant were sentenced to 12 months and one day, she could earn good time credit against her sentence and would serve approximately 10 months imprisonment.

3. After sentence was imposed, I talked with Assistant United States Attorney Daniel Kaleba who represented the United States in this matter at sentencing. He has advised me that the United States has no opposition to the correction of Ms. Bertelsen's sentence.

1 I declare under penalty of perjury the foregoing is true and correct.

2 Executed this 2<sup>nd</sup> day of May, 2008 at Hayward, California.

3  
4  
5 /s/  
6 MICHAEL P. THORMAN  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28